

Idaho DEQ-Suggestions and General Comments for JRA Best Practices-December 23, 2013_M. Bridges

Determining Baseline and Additionality

In order to establish baseline it's important to determine a ballpark idea of what load reduction is needed for a site or sites. Most TMDLs give gross LAs to land use types or sectors e.g. forest lands, ag lands, BLM desert lands, pasture. No individual farmer or landowner is called out on an individual basis. In fact, that level of detail is almost always absent because private property owners rarely allow you to monitor on their private property.

An example of our thinking on how we would calculate, for simplicity's sake is thus: If your LA for agriculture was 10,000 lbs./day, this is also your LC (load capacity) for agriculture and should include natural background and your margin of safety. If the current loading was 20,000 lbs./day, you need to reduce by 10,000 lbs./day. If there are 5000 acres of ag land you take $10,000/5000 = 2$ lbs./day. On an individual acre by acre basis you would need to achieve the 2 lbs/day reduction plus an additional benefit (uplift is how you seem to couch this) and anything above and beyond that you could sell. It might valued higher or lower based on location ratios due to proximity to the compliance point depending on how you've set up your trading program. In no case will it be 1:1. Your net benefit after any or all ratios and whatnot are applied still must be 1: to 1.5 or something of that nature.

The real issue still remains how far back to you go for calculation purposes. We are of the mind here at DEQ that the farmer was supposed to be applying BMPs anyway, so whatever they've done in the past shouldn't count unless it is from the very near term. It often takes several years to develop a TMDL, so that data that goes into that is often more than three years old. It seems plausible that you could include anything that was implemented after the draft TMDL goes to public comment up to the time it is formally approved. So maybe that is a year, two at the most for a look back. Is it fair or unfair? I don't know. But in many cases the BMPs that do get implemented are done with 319 or other programs, so it's not as if the individual didn't get some financial benefit already out of apply practices they should have been using to ameliorate or prevent water quality problems under the law.

While one might use an "approved" model for a better analysis, it might show more or less reduction for a site specific characterization. The HCT tool for dryland ag farming in the Hangman Creek/Spokane River watershed is an example where this might be more desirable to apply as opposed to using "calculated" credits such as are identified for typical BMPs on irrigated ag lands in Southern Idaho like the Lower Boise and Mid Snake. It was our experience that ARS has not conducted similar research for dryland farms in Northern Idaho/Eastern Washington.

The bottom line is you need to meet and exceed your per acre reduction before you can enter into trading e.g. meet the baseline required reduction according to the TMDL LA (which is really the same as your LC aka load capacity, by sector). I'm guessing a buyer would want to see how it

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(cropping rotations, sediment ponds, etc) is working first before they'd enter into a contract because the risk of failure or inadequate operations and maintenance is fairly high.

Going back to many of the comments Claire Schary made and others at EPA, I'd like to add some additional thoughts. Some of these are nit-picky. Pollution is not the same as pollutants. But you tend to use the words interchangeably. We write TMDLs to remove pollutants that are impairing waterbodies. We do not write TMDLs for pollution, which are viewed differently by EPA because we cannot assign a load to them. This includes flow and habitat alteration. I'm sorry to say this, but while TFT and WP and others often look to deal with those issues for trading, we must look at how the load can be reduced of a specific identified pollutant. It's not a perfect solution. In fact, TMDLs really are a very imperfect solution to problems and it's unfortunate that we aren't able to adequately wrap in other issues. I think it is important for this trading JRA to acknowledge that reality. Otherwise we are not meeting the intent of the CWA, or the TMDL. In situations where we can wrap in these other benefits to environmental and ecosystem services, as David Primoich and others often articulate, then I think we are on the same page. That's how baselines can work on water quality improvement projects that aren't related to TMDLs but are more related to meeting 401 certifications or FERC hydropower licenses.

Draft Best Practice-Identifying nonpoint source load: item 3) amounts given to individual non-point source sites. This is a total non starter in Idaho. We have no authority to do this. We often have no access to private property. Our DMA in fact, cannot legally divulge this kind of information even in implementation plans due to USDA confidentiality agreements they have signed. If we attempted to do this it would take decades to get a TMDL done. This is why we've opted for the more simplistic method of overall ag LAs and then calculate a baseline load based on that. It's not perfect, but it's the best path forward.

Draft Best Practice-Establishing Phased Nonpoint Source Excess Load Reductions...This is the role of the implementation plan, not the TMDL. The TMDL tells you how much reduction you need. It's a mathematical and/or modeling exercise to make that determination and parse it out in a manner that makes sense with the rigor or lack thereof of the information at hand. The agency in charge of the TMDL is typically not the agency in charge of the implementation.

Draft Best Practice-Trading Program Base Year-Personally I want to discourage look back periods by and large. Projects in advance will rarely be able to anticipate load reductions or their LAs or WLAs. It provides more pressure to agencies to accept poor project. Idaho expects to have trading frameworks that will make that determination for a watershed that will engage in trading. The Lower Boise Trading Framework was developed over 15 years ago in advance of what at that time was expected to be a TMDL going to public comment. We still don't have one. The Framework will need to be updated once we have a draft going to public comment. While we had anticipated having some projects in advance of the TMDL or concurrent with it, we never did. And we don't want to give credit for things done years ago, that should have been

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done regardless of trading. We don't support allowing someone to trade who has stopped doing proper practices in order to "game the system". While non point source implementation is voluntary, there is still an expectation under the CWA that all entities will comply over time.

Draft Best Practice-Expressing baseline requirements-I don't think we would articulate this in regulation because rule making is a nightmare. I would like to see you add something about accomplishing this through Trading Framework documents for the respective watershed or in an indepth implementation plan.

Draft Best Practice-Use of public dollars dedicated to conservation to satisfy baseline...USDA through NRCS and its other programs has said they don't care if people use those projects for meeting trading baseline requirements. The problem is much bigger, however, when those dollars go to meet additionality. What about the taxpayer dollars that go to the municipalities for their wastewater treatment plants? 319 funds and SRF funds come from EPA. Why would those be allowed (I don't think they are actually, but we need some definitive clarification from EPA) to be used towards generating credits and income for the farmer or even the WWTP? An example of how this should work if it is allowed is thus: I have a mortgage that gets a low interest HUD rate based on my after tax income. In exchange for that lower interest rate I cannot a) rent my home out except in very specific cases such as Peace Corp volunteer, call up for military service) and b)when I sell my home at a higher price less equity put into it, I must pay back the difference in low interest credit and the prevailing rate at the time of the original loan or current conditions, whichever is less. c) I can not sell my home to another entity for assuming my mortgage without them qualifying to take over my loan as low income or them taking out a new loan not HUD subsidized. My point is simply that there has to be a limit on how much the public taxpayer shells out so someone is making money off them. This does not set well with taxpayers.